NOTES TO THE TABOR SCHEDULE OF REQUIRED COMPUTATIONS

NOTE 1. PURPOSE OF THE SCHEDULE OF REQUIRED COMPUTATIONS

The purpose of the Schedule of Required Computations is to ascertain and document compliance with Title 24 Article 77 of the Colorado Revised Statutes, which is the implementing statute for Article X Section 20 of the State Constitution (TABOR). The report is required to include at a minimum state fiscal year spending, reserves, revenues, and debt. The schedule also includes a calculation of the limit on fiscal year spending, and the amount of the required refund, as well as all related adjustments.

TABOR has many provisions including a requirement for a vote of the people for new taxes or tax rate increases and a limit on the amount of fiscal year spending. Fiscal year spending is defined as district expenditures and reserve increases except those expended from exempt sources, such as, gifts, federal funds, damage awards, property sales, reserves, and other items. This definition, while focused on spending is essentially a limitation on revenue retention because reserve increases are unspent revenues. Therefore, the terms fiscal year spending and nonexempt revenue are used interchangeably throughout these notes.

The limit on revenue retention is based on an allowable growth percentage (See Note 11) applied to the lesser of the prior year's revenues or the prior year's limit. Revenues in excess of the limit are required to be refunded to taxpayers unless voters approve retention of the excess.

NOTE 2. BASIS OF ACCOUNTING

Pursuant to Article 77 of Title 24, Colorado Revised Statutes, this report is prepared in accordance with generally accepted accounting principles (GAAP) except where an irreconcilable difference exists between GAAP, and state statute or the provisions of Article X Section 20 of the State Constitution (TABOR).

The accounting principles used by the State are more fully described in the State's Comprehensive Annual Financial Report available from the State Controller's Office.

NOTE 3. DEFINITION OF THE DISTRICT

TABOR defines the district as "the state or any local government, excluding enterprises." It further defines enterprise as "a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined."

The General Assembly, for the purpose of implementing TABOR, stated in C.R.S. 24-77-102(16)(a) that "state" means the central civil government of the State of Colorado, which consists of the following:

(I) the legislative, executive, and judicial branches of government established by Article III of the state constitution;

(II) all organs of the branches of government specified in subparagraph (I) of paragraph (a) of this subsection (16), including the departments of the executive branch; the legislative houses and agencies; and the appellate and trial courts and court personnel; and

(III) state institutions of higher education.

(b) "state" does not include:

(I) any enterprise;

(II) any special purpose authority.

The General Assembly has designated the following as enterprises excluded from the district:

- State Lottery,
- College Access Network,
- Division of Correctional Industries,
- Division of Wildlife,
- State Fair Authority,
- CollegeInvest,
- Clean Screen Authority,
- Statewide Tolling Authority,
- State Nursing Homes, and
- Brand Board

It further established a statutory mechanism that allows governing boards of the institutions of higher education to designate certain auxiliary operations as enterprises, which are also exempt from TABOR. The Board of Regents of the University of Colorado designated the entire University of Colorado as an enterprise under the authority granted by Senate Bill 189 enacted in the 2004 legislative session.

Although the General Assembly and governing boards have designated certain enterprises as exempt from TABOR, those enterprises must continue to meet the criteria of a government-owned business authorized to issue its own revenue bonds and annually receiving under 10 percent of its revenue in grants from all Colorado state and local governments combined.

NOTE 4. DEBT

Certificates of Participation, which are used by the State for long-term lease purchases, are not considered debt of the State for purposes of this report as provided by C.R.S. 24-30-202(5.5).

In interrogatories submitted by the General Assembly regarding House Bill 99-1325, the Colorado Supreme Court ruled that Transportation Revenue Anticipation Notes (TRANS) issued by the Colorado Department of Transportation do not constitute debt of the State as defined in Article XI Section 3 of the State Constitution.

However, the Supreme Court ruled that the TRANS are a multiple-fiscal year obligation as defined by Article X Section 20 of the State Constitution, thus requiring an approving election before issuance. In November 1999 the voters approved the issuance of $1.7 billion of TRANS.

NOTE 5. EMERGENCY RESERVES

TABOR requires the reservation, for declared emergencies, of 3 percent or more of fiscal year spending, excluding debt service payments. This requirement for FY 2004-05 totals $254,488,898.

The State has designated the following balances for this reserve:

- $24,000,000 – Major Medical Fund,
- $20,000,000 – Subsequent Injury Fund,
- $12,000,000 – Worker’s Compensation Cash Fund,
- $6,000,000 – Operational Account of the Severance Tax Trust Fund,
- $6,000,000 – Colorado River Recovery Program Loan Fund,
- $3,000,000 – Fish & Wildlife Resources Fund
- $98,695,000 – Wildlife Cash Fund
- $84,793,898 of the $89,005,000 of state properties authorized for designation as part of the emergency reserve.

In the Wildlife Cash Fund, $27,247,093 is available in net assets not invested in capital assets. The remaining $71,447,907 represents capital assets of the fund net of related debt. In the event of an emergency that exceeded the financial assets in the reserve, the capital assets of the Wildlife Cash Fund and the designated state properties would have to be liquidated to satisfy the constitutional requirement.

NOTE 6. STATUS OF REFUNDING

There was no outstanding required TABOR refund at the beginning of Fiscal Year 2004-05. The Schedule of Required Computations shows that $41,063,503 is required to be refunded in Fiscal Year 2005-06 for excess nonexempt revenues of Fiscal Year 2004-05. A liability for that amount has been recorded in the General Fund in the state's Comprehensive Annual Financial Report.

A suit has been filed in state court challenging the constitutionality of $442.7 million of transfers from various cash funds to the General Fund made in and after Fiscal Year 2001-02 to mitigate shortfalls of general-purpose revenues. The suit claims that the transfers required increases or continuation of fees to replenish cash funds reserves, and these fees were actually tax increases not approved by the voters as required by TABOR. The plaintiffs seek replenishment of the cash funds from the General Fund and a halt to this practice in the future. The court ruled against the plaintiffs, and they have appealed the court's decision. If the plaintiffs were to prevail in their appeals, any required disbursements could be considered a required TABOR refund.

NOTE 7. OTHER SOURCES AND ADDITIONS

The $628.4 million reported in this line item primarily comprises: $245.6 million of investment trust fund additions by participants; $206.3 million of pension and other employee benefit trust fund investment earnings and additions by participants; $98.8 million of unclaimed property additions newly exempted by C.R.S. 38-13-116; $31.2 million of accounts payable reversions, reimbursements of prior year expenditures, and other miscellaneous exempt revenues; $20.0 million of certificate of participation proceeds for building purchase and renovation at the Department of Transportation; and $10.2 million of local government expenditures recorded by the state as revenues and expenditures to meet grant matching-funds requirements.

Other sources also include $6.8 million in capital lease financing and $9.5 million from the Great Outdoors Colorado Trust Fund paid to the Department of Natural Resources.

NOTE 8. VOTER APPROVED REVENUE CHANGES

When state voters approve a revenue change, the resulting revenues are exempt from the TABOR limit on fiscal year spending.

In the 1998 general election, voters approved a citizen-initiated law, C.R.S. 25-8-501.1, Regulation of Commercial Hog Facilities, adopting a permit fee. The State collected $155,396 and $164,080 from this exempt source in Fiscal Years 2004-05 and 2003-04, respectively.

In the 2000 general election, voters approved a citizen-initiated amendment that added Section 14 to Article XVIII of the State Constitution. This amendment allowed the use of marijuana for medical purposes and authorized the Department of Public Health and Environment to charge a fee for the issuance of a permit for such purpose. The State recorded $75,372 and $52,762 including interest and unrealized gains/losses from this revenue source in Fiscal Years 2004-05 and 2003-04, respectively.

In the 2000 general election, voters approved a citizen-initiated amendment that added

Section 17 to Article IX of the State Constitution. This amendment created the State Education Fund and diverted the revenues from a tax of one-third of one percent on taxable income of individuals, corporations, estates, and trusts from the General Fund to this fund. It also exempted that revenue from TABOR. The amendment was effective January 1, 2001 and resulted in $323,769,489 and $280,482,461 of tax revenues, interest, and unrealized gains/losses, being excluded from fiscal year spending in Fiscal Years 2004-05 and 2003-04, respectively.

In the 2004 general election, voters approved a citizen-initiated amendment that added Section 21 to Article X of the State Constitution. The amendment authorized additional cigarette and tobacco taxes (3.2 cents per cigarette and 20 percent of manufacturer's list price for other tobacco products) effective January 1, 2005. The amendment specified the use of the tax revenue generated for specific health related programs, and it exempted the revenue from TABOR limitations. The state recorded $81,059,239 of tax revenues, interest, and unrealized gains/losses from this exempt source in the half-year period from January 1, 2005 through June 30, 2005.

In the 2005 general election, Colorado voters approved Referendum C – a measure referred to the voters by the Legislature. The measure is effective beginning with Fiscal Year 2005-06, and therefore, it did not affect the Fiscal Year 2004-05 TABOR Schedule of Revenues or Schedule of Computations. For the following five fiscal years, if TABOR revenues exceed the TABOR limits, Referendum C allows the state to retain and spend the excess revenues that would otherwise be refunded to the citizens.

NOTE 9. DISTRICT RESERVES

District reserves are the cumulative fund balances of the state excluding the capital assets, non-fund liabilities of the governmental funds, and fund balances of the exempt enterprises. The majority of these fund balances are not available for appropriation due to legal and contractual restrictions.

NOTE 10. PRIOR-PERIOD FUND BALANCE ADJUSTMENTS

The increase of $19,183,180 in the district beginning fund balance consists of the following:

- increases totaling $17,028,291 to correct for overstatement of accumulated depreciation, unrecorded capital leases, liabilities inappropriately recorded, and enterprise activity that should have been reported in the district by the Colorado Community College System,
- an increase of $3,322,425 related to post audit adjustments in the state's Comprehensive Annual Financial Report that increased Fiscal Year 2003-04 district revenue after the Fiscal Year 2003-04 TABOR revenues were audited,
- an increase of $278,382 to correct for an error in recording certificates of participation by the Department of Personnel & Administration,
- a reduction of $4,548,112 related to the transfer of worker's compensation liabilities from the Department of Personnel & Administration to the Colorado State University,
- a reduction of $786,717 related to moving district activity to a qualified enterprise fund at the Auraria Higher Education Center,
- a reduction of $10,044 related to moving district activity to a qualified enterprise fund at Pikes Peak Community College,

- a reduction of $7,605,045 related to the Department of Natural Resources removing long-term receivables in Fiscal Year 2004-05 that should have been removed from the books of record in Fiscal Year 2003-04,
- an increase of $11,504,000 related to the Department of Labor and Employment removing long-term actuarial liabilities inappropriately recorded in governmental funds.

NOTE 11. SOURCES OF TABOR GROWTH LIMIT

After adjustment for voter approved revenue changes, the allowable percentage increase in state fiscal year spending equals the sum of inflation and the percentage change in state population in the calendar year ending six months prior to the start of the fiscal year. Inflation is defined in C.R.S. 24-77-102(8) as "the percentage change in the consumer price index for the Denver-Boulder Consolidated Metropolitan Statistical Area For All Urban Consumers, All Goods, as published by the U.S. Department of Labor."

The Office of State Planning and Budgeting provided the 2.2 percent allowable growth rate, which comprises a 1.1 percent increase for population growth (calendar year 2003) and a 1.1 percent increase for inflation.

NOTE 12. SPENDING LIMIT ADJUSTMENTS

In Fiscal Year 2004-05, there were three types of adjustments made to the base before applying the 2.2 percent allowable growth rate as follows:

- an increase of $643,115 as required by CRS 24-77-103.7(2) for over refunds of the Fiscal Year 1999-00 and 2000-01 TABOR refund liability paid in Fiscal Year 2003-04 (See Note 16 for related information),
- a decrease of $384,020,739 for the qualification of enterprises (See Note 14), and
- an increase of $275,579 which comprises an increase of $3,322,425 related to Fiscal Year 2003-04 revenues recorded in the state's financial statements after the completion of that year's audit of TABOR revenues and Schedule of Computations (See Note 13), and a decrease of $3,046,846 to correct for errors made in prior years. Together these adjustments also increased the current refund by $283,804 after recalculation of the residual growth dividend percentage related to the post audit entry and application of the allowed population and inflation adjustment to the errors made in prior years.

The decrease of $3,046,846 is the net result of four errors in Fiscal Year 2002-03 and 2003-04 revenues. In order to show the total effect on the Fiscal Year 2004-05 base, the error amounts shown below related to Fiscal year 2002-03 have been increased by the allowable growth rate of 3.6 percent between Fiscal Years 2002-03 and 2003-04.

The Department of Treasury understated Fiscal Year 2002-03 nonexempt unclaimed property revenue by $547,058 when they recorded revenue net of external audit fees.

The State Controller's Office understated Fiscal Year 2002-03 and 2003-04 nonexempt revenue by $3,317,882 and $3,063,603, respectively, when it failed to identify indirect cost transfers from the Division of Wildlife (a TABOR qualified enterprise) to the Department of Natural Resources as original source revenue of the district that should have been counted as nonexempt.

The Department of Treasury overstated Fiscal Year 2002-03 and 2003-04 nonexempt revenue by $1,573,702 and $8,741,351, respectively, when it recorded gains on the sale of investments, held in an Investment Trust Fund for Pinnacol Assurance, as nonexempt rather than exempt.

In preparing the Fiscal Year 2003-04 financial statements, the State Controller's Office understated nonexempt revenue by $339,664 when it inadvertently eliminated nonexempt revenue received by the Department of Law from the Division of Wildlife, a qualified TABOR enterprise. The elimination was required by Generally Accepted Accounting Principles, but should have been done in a way that maintained the district's original source revenue received from qualified TABOR enterprises.

NOTE 13. POST AUDIT ENTRIES

In the Fiscal Year 2003-04 Comprehensive Annual Financial Report, the state recorded a late audit adjustment increasing land rental income at the State Land Board in the amount of $3,322,425. The State Controller and State Auditor agreed that this entry would be shown as an adjustment to the Fiscal Year 2004-05 Schedule of Computations rather than being shown as part of the Fiscal Year 2004-05 nonexempt district revenue. The $3,322,425 adjustment is part of the $275,579 spending limit adjustment discussed in Note 12.

NOTE 14. ENTERPRISE QUALIFICATION AND DISQUALIFICATION

TABOR specifies that qualification and disqualification of enterprises shall change the district base. None of the Fiscal Year 2003-04 qualified enterprises were disqualified in the Fiscal Year 2004-05.

The University of Colorado, the Brand Board in the Department of Agriculture, and the Capitol Parking Fund in the Department of Personnel & Administration each operated as completely qualified enterprises for the first time in Fiscal Year 2004-05. Certain portions of the University of Colorado were qualified enterprises in Fiscal Year 2003-04, and the Parking Fund was a qualified enterprise for a short time in Fiscal Year 2003-04. The qualification resulted in a net reduction of the district base used in calculating the Fiscal Year 2003-04 limit by $384,020,739. That adjustment comprises a:

- $387,804,390 reduction for the University of Colorado,
- $4,660,632 reduction for the Brand Board,
- $366,741 reduction for the Capitol Parking Fund, and an
- $8,811,024 increase related to receipts by other state agencies that would have been counted as TABOR nonexempt revenue in Fiscal Year 2003-04 if the three activities had been enterprises.

NOTE 15. GROWTH DIVIDEND

The 2000 Federal Census adjusted the change in the State's population between 1999 and 2000 by 6.0 percent to account for a larger than estimated population change in the State during the 1990s. If the estimates of the State's population change had been more accurate, the State would have been able to retain larger amounts of the TABOR non-exempt revenues to meet the needs generated by this growth. The General Assembly passed legislation in the 2002 Session that recaptures the revenues lost because of the error in the population estimates. This recapture is commonly referred to as the growth dividend.

In Fiscal Year 2003-04, the TABOR Schedule of Computations reported that revenues exceeded the allowable 3.6 percent growth by $374,702,740. Without the growth dividend, the State would either have had to refund this amount to the taxpayers, or request authority from state voters to retain all or a portion of the amount. However, under CRS 24-77-103(2)(b)(II.5)(A-D) the state reported that it would retain the full amount and add it to the base for computing the Fiscal Year 2004-05 limit. As reported in Fiscal Year 2003-04, the amount used 4.9 percent of the available 6.0 percent growth dividend leaving 1.1 percent available to be added to the allowable percentage growth in Fiscal Year 2004-05 and subsequent years.

In the 2005 Legislative session, the General Assembly passed House Bill 1310, which directed the state to retroactively change the method of accounting for refunds made in excess of the required TABOR refund (See Note 16). This legislation thereby required recalculation of the growth dividend. Because the change increased nonexempt revenue of prior years, it increased the base and thereby reduced the amount of growth dividend used in Fiscal Year 2003-04. The change reduced the use of the growth dividend by $94,720,732 from $374,702,740 (4.9 percent) to $279,982,008 (3.6 percent). As a result, the growth dividend available in Fiscal Year 2004-05 increased from 1.1 percent to 2.4 percent.

NOTE 16. TREATMENT OF OVER REFUNDS

The required refunds calculated in this and prior year reports are distributed to individual state taxpayers based on statutory mechanisms as discussed in Note 17. The Department of Revenue makes the distributions of the TABOR refund through the income tax refund process using estimates of the number of taxpayers expected to qualify for the TABOR refund. The estimates may result in over or under distribution of the required refund throughout the four-year period allowed for amended tax returns. As required by statute, under distributions are carried forward to subsequent years and added to the required refund. Beginning in Fiscal Year 1999-00, the first year in which the distributions exceeded the required refund, the state has reduced nonexempt revenue each year by the amount of that year's distribution in excess of the required refund.

When subsequent year's excess revenues required the state to make a refund, the over refund treatment described above provided the appropriate credit for over refunds by reducing future refunds. However, in years when revenues fell below the limit and no refund was required, the described over refund treatment further reduced revenues and did not provide the state with credit for having made the refund. The revenue reduction also reduced the base upon which the subsequent year's revenue limits would be calculated. This adversely affected the state's ability to retain future revenue growth because each successive year's limit is based on the lesser of the prior year's limit or the prior year's nonexempt revenue.

To address this adverse effect, the General Assembly enacted House Bill 1310 in the 2005 legislative session (HB05-1310). The bill required that over refunds be applied to an existing TABOR liability or be carried forward to a future year. As a result, revenues will no longer be reduced when TABOR refunds exceed the amount required to be refunded.

The bill also directed the state to calculate the Fiscal Year 2004-05 refund without the effect of revenue reductions related to over refunds paid in Fiscal Years 2001-02, 2002-03, or 2003-04. Doing so increased the base upon which the Fiscal Year 2003-04 limit was calculated by $92,050,046. With the allowable growth of 3.6 percent between Fiscal Year 2002-03 and 2003-04, the $92.1 million increase to the base reduced the use of the growth dividend in FY2003-04 by the $95,363,847. This amount was offset by a revenue increase of $643,115 for excess refunds paid out in Fiscal Year 2003-04 resulting in the $94,720,732 net change in growth dividend used reported in Note 15.

The adjustment of the base did not include any increase for over refunds paid out in Fiscal Year 2001-02 because Fiscal Year 2002-03 revenues were lower than Fiscal Year 2001-02 revenues. Because the Fiscal Year 2002-03 revenues were far below the limit for that year, they became the base for calculating the use of the growth dividend in Fiscal Year 2003-04. Under this set of facts, changes to the Fiscal Year 2001-02 revenues would have had no effect on the use of the growth dividend in Fiscal Year 2003-04 or the related refund required in Fiscal Year 2004-05.

HB05-1310 also directed the State Controller to reduce the refund required in Fiscal Year 2004-05 by the amount of over refunds paid in Fiscal Years 2001-02, 2002-03, and 2003-04. In those three fiscal years, the state recorded over refunds of $127,809,876. After adjustment for the $283,804 error correction, the amount in excess of the adjusted fiscal year spending limit was $168,873,379. This amount was reduced by the $127,809,876 over refund adjustment resulting in $41,063,503 required to be refunded during Fiscal Year 2005-06 for Fiscal Year 2004-05 revenues in excess of the limit.

NOTE 17. FUTURE REFUNDS

In the 1999 regular session, the General Assembly enacted mechanisms to refund Fiscal Year 1998-99 and subsequent years' excess revenue. In succeeding sessions the General Assembly enacted additional mechanisms to refund the excess revenue. The mechanisms become active at different thresholds depending on the total amount of required TABOR refund. The thresholds are indexed to inflation and are calculated by the Office of State Planning and Budgeting.

1. An earned income tax credit of 10 percent of the federal tax credit. This is available when the TABOR threshold equals $66.9 million.
2. An income tax credit of the lesser of $500 or 100 percent of non-reimbursed foster care expenses for foster parents. This is available if the TABOR refund is $225.5 million or more.
3. A business personal property tax credit, which is available when the TABOR refund is $227.6 million or more.
4. An income tax credit for contributors of matching funds to those qualified individuals who save for post-secondary education, purchase a first home, or start a business. The TABOR threshold is $235.6 million.
5. Interest, dividend, and capital gains exclusion up to $1,200 for individuals and $2,400 for couples for tax year 2000 (see mechanism number 13). The TABOR threshold is $348.1 million.
6. An income tax credit through January 1, 2005 to health and dental care providers who practice in certain rural areas. The TABOR threshold is $353.4 million.
7. An income tax credit that is a percentage of the federal child care credit. The TABOR threshold is $359.6 million.
8. An income tax credit for contributions to the Institute for Telecommunications Education. The TABOR threshold is $394.6 million.
9. A 50 percent sales tax credit for the sale, purchase, storage, use, or consumption of tangible personal property used directly

and predominantly for research and development in Colorado. The TABOR threshold is $404.3 million.

10. A reduction in the annual registration fees for motor vehicles and a 25 percent reduction in the fees for trucks, truck tractors, and other vehicles. The TABOR threshold is $409.3 million.
11. An income tax credit for contributions to high technology scholarships. The TABOR threshold is $409.3 million.
12. An income tax deduction for charitable contributions in excess of $500 made by individuals who claim the standard deduction. The TABOR threshold is $433.9 million.
13. An extension of mechanism number 5 changing the maximums to $1,500 for individuals and $3,000 for couples in interest, dividends, and capital gains excludable from state income taxes beginning January 1, 2001. The TABOR threshold is $433.9 million.
14. A sales tax exemption for certain pollution control devices. The TABOR threshold is $433.9 million.
15. A sales tax refund when the sales tax rate exceeds 0.01 percent and is imposed on new or used commercial trucks or other vehicles that are used in interstate commerce and have a gross weight of more than 26,000 pounds. The TABOR threshold is $433.9 million.
16. An income tax credit for eligible agricultural value-added cooperatives. The TABOR threshold is $451.1 million.
17. An income tax credit for the cost of health benefit plans not paid by the employer or deducted from the individual's federal adjusted gross income. The TABOR threshold is $496.0 million.
18. An expansion of the capital gains modification to include capital gains realized in tax years beginning on or after January 1, 1999, as well as a reduction of the holding period from five years to one year. The TABOR threshold is $533.3 million.
19. Any remaining amount is distributed to all full-year Colorado residents 18 years and older as a refund of sales taxes. When the refund is estimated to be under $15 for each qualified taxpayer, an identical amount is refunded to each qualified taxpayer. When the sales tax refund is estimated to be over $15 for each qualified taxpayer, a fixed amount is set for each of six tiers of federal adjusted gross income. The Department of Revenue calculates the amount of the individual refund for each tier as a statutory percentage of the total sales tax refund divided by the number of anticipated taxpayers in each tier.

The Fiscal Year 2004-05 required refund of $41,063,503 results in an identical refund for each qualified taxpayer and does not activate the six tier refund mechanism or any of the other mechanisms that have higher thresholds.